

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS,
LLC, a Delaware Limited Liability Company,

X

Civil Action No.
05-11639 NG

Plaintiff,

v.

TIM ROBINSON, individually and d/b/a www.ow-
racing.com and www.torn8alley.com

EX PARTE APPLICATION
FOR TEMPORARY
RESTRAINING ORDER
AND EXPEDITED
DISCOVERY

Defendant.

X

Pursuant to 17 U.S.C. § 1203, Rules 4, 30(a), 34(b) and 65(b) of the Federal Rules of Civil Procedure, and upon the Affidavit of David Kaemmer, this ex parte motion, and the attached Memorandum of Law, plaintiff iRacing.com Motorsport Simulations, LLC (“iRacing”) respectfully requests that this Court issue: (1) a temporary restraining order to prevent defendant Tim Robinson, individually and d/b/a www.ow-racing.com and www.torn8alley.com, from publishing any works that derive from or otherwise modify iRacing’s copyrighted computer game, NASCAR® Series 2003 Season (“NASCAR® 2003”) and/or any executables that defeat NASCAR® 2003’s copy protection; and (2) order Robinson to respond to one document request on an expedited basis in order to permit iRacing to present its preliminary injunction motion on a more fully developed record. In support of this application, iRacing relies on the Memorandum of Law submitted herewith and states as follows:

1. iRacing owns the registered copyrights in NASCAR® 2003.
2. NASCAR® 2003 was publicly distributed under an “End User License

Agreement" that explicitly prohibits licensees from "reverse engineering" or otherwise attempting to obtain copies of NASCAR® 2003's human-readable source code.

3. Nevertheless, Robinson willfully and knowingly violated the copyright laws (17 U.S.C. § 101, et seq.) by created applications that automatically generate unlicensed works derivative of NASCAR® 2003 in violation of iRacing's copyrights.

4. Robinson also willfully and knowingly created executable files that circumvent NASCAR® 2003's copyright protection systems in violation of 17 U.S.C. § 1201(a), et seq.

5. Robinson then published and distributed these infringing applications on three related websites: www.ow-racing.com, www.first-racing-sucks.com, and www.torn8oalley.com.

6. iRacing here seeks, among other things, immediate injunctive relief preventing Robinson, individually and d/b/a www.ow-racing.com and www.torn8oalley.com, from publishing any works derivative of NASCAR® 2003 or any executables that defeat NASCAR® 2003's copy protection.

WHEREFORE, iRacing respectfully requests that this Court:

(A) Issue a temporary restraining order prohibiting Robinson, individually and d/b/a www.ow-racing.com and www.torn8oalley.com, from publishing any works that derive from or otherwise modify NASCAR® 2003 and/or any executables that defeat NASCAR® 2003's copy protection;

(B) Grant iRacing leave to request that Robinson immediately produce the one class of documents as described in iRacing's first request for production of

documents attached as Exhibit A to the [Proposed] Order On Ex Parte Application For Temporary Restraining Order And Expedited Discovery submitted herewith;

(C) Indefinitely preserve inviolate all software, documents, source code and communications relating to NASCAR® 2003 and anyone who downloaded any application Robinson created to modify NASCAR® 2003 or to defeat NASCAR® 2003's copy protection systems; and

(D) Grant any other relief the Court deems just and proper.

ORAL ARGUMENT REQUESTED

iRacing respectfully requests that this Court accept oral argument on this application.

DATED: August 8, 2005

Respectfully submitted,

iRacing.com Motorsport Simulations, LLC

By its attorneys,

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